Filed 11/26/14 In re Hayley M. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re HAYLEY M., A Person Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondents, v. A.M. et al., Defendants and Appellants.	B253535 (Los Angeles County Super. Ct. No. CK97161)

APPEAL from orders of the Superior Court of Los Angeles County, Amy Pellman, Judge. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant A.M.

Frank H. Free, under appointment by the Court of Appeal, for Defendant and Appellant J. E.

Law Office of Marissa Coffey and Marissa Coffey, under appointment by the Court of Appeal, for Respondent Minor, Hayley M.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

Appellants Adrian M. (Father) and J. E. (Mother) appeal the juvenile court's jurisdictional order in which the court asserted jurisdiction over appellants' three-year old daughter, Hayley M., under Welfare and Institutions Code section 300, subdivisions (b) and (j).[1] Both parents contend substantial evidence does not support the court's jurisdictional findings. Mother also contends the court erred in amending the allegations against her after hearing the evidence at the jurisdictional hearing. Father also appeals the court's dispositional order, removing Hayley from his custody. We conclude that the dispositional issues raised by Father were forfeited by his submission to the court's dispositional order, and that appeal of the dispositional order has been rendered moot by proceedings that returned Hayley to Father's custody while the appeal was pending. With respect to the jurisdictional issues raised by appellants, we discern no error. We, therefore, affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Preliminary Investigation*

On December 26, 2012, Hayley's five-month old brother, Adrian M., died while sleeping in his parents' bed. Interviewed by the Department of Children and Family Services (DCFS) caseworker and police investigators prior to the detention and jurisdictional/dispositional hearings, Father and Mother reported that Adrian

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

had been medically fragile since his birth, when he had been placed in intensive care due to a collapsed lung. In late November 2012, Adrian was hospitalized for several days due to difficulty breathing. At that time, he was diagnosed with a respiratory infection or pneumonia.[2] After his release, Father and Mother were advised to administer albuterol through a breathing machine every four hours as long as Adrian was coughing or wheezing. On December 23, Adrian began coughing and wheezing again, and had a runny nose. Hayley, too, had been prescribed albuteral for breathing difficulties associated with bronchitis. The family had been out of albuterol for ten days, and Mother planned to take Adrian to see a physician and obtain a new albuterol prescription on the 26th.

On the evening of December 25, Father drank one or two 24-ounce beers, smoked half a gram of marijuana at approximately 11:15 p.m., and fell asleep.[3] At 2:15 a.m., Mother left for work while Father slept.[4] At 2:30 a.m., Father awoke because Adrian was crying. Father fed the baby, swaddled him, and put him in the parents' bed on his stomach. Father put Hayley to sleep in the same bed, and reclined next to them. He remained asleep until the following morning when, after Mother returned at about 6:30, she woke up Father looking for Adrian, and the infant was found under the bed covers, face down, blue and cold. Attempts at CPR failed, and Adrian was pronounced dead at the hospital that morning.

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[2] Although not mentioned in the interviews, it appeared from hospital records that Adrian was also taken to an emergency room in October 2012 because he had difficulty breathing and a cough. He was prescribed albuterol at that time.

[3] Father claimed to have drunk only one beer and a small amount of another, but there were two empty beer cans found in the home.

[4] Mother told police officers that Father was awake or "semi-asleep" when she left. Father said he was asleep, and was awakened by the baby sometime later. Father told investigators that he is a "hard sleeper."

Mother admitted knowing Father regularly smoked marijuana and drank 24-ounce beers, but claimed he did not use these substances around the children. She was aware Father had smoked marijuana and consumed beer before she left for work on the morning of December 26, but believed he was no longer under the influence when she left him alone with the children. She saw Father's marijuana in a child-proof medicine bottle on the kitchen counter as she was leaving, but believed it was out of Hayley's reach. She said when the children were not feeling well, it was common for them to sleep in the parents' bed.

Father reported smoking marijuana once or twice daily, usually in his car or on the balcony of the family residence. He began smoking in 2008, after injuring his back. He had acquired a prescription for medical marijuana to address "insomnia." He believed he was no longer under the influence at 2:15 a.m. when Mother left for work on the day Adrian died, and denied ever being under the influence when the children were in his sole care.[5] He acknowledged the presence of marijuana on the kitchen counter, but stated Hayley would have been unable to reach it. Father continued to smoke marijuana until December 28, 2012. He gave up smoking it thereafter, and when interviewed for the February 2013 jurisdiction report, stated that he had no intention of smoking it again.[6] He agreed to undergo drug abuse counseling.

Police officers who arrived to investigate the death reported that every room of the home was filthy -- "a pig sty." Officers found marijuana, a drug scale, other drug paraphernalia, and tobacco rolls with marijuana inside; two bottles containing marijuana were on the counter. The baby's crib did not appear to be in regular use.

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[5] Father provided a blood sample at 12:05 p.m. on December 26 that showed a measurable amount of THC.

[6] Father's drug testing was consistently negative after an initial positive test.

The coroner's report stated the immediate cause of Adrian's death was "[m]echanical asphyxia," but that "[a]fter a review of the circumstances of the case, toxicology and autopsy the manner of death is undetermined." The report noted that Adrian had a history of respiratory problems and was suffering from a cold at the time of his death, and that his illness and respiratory problems "could have played a role" in his death. The report also stated that "[a]ccidental overlay" could not be "excluded."

B. *Original Petition*

The original petition asserted that jurisdiction was warranted under section 300, subdivision (b) (failure to protect) and subdivision (j) (abuse of sibling) based on the factual allegation that Father placed Adrian in a detrimental and endangering situation on December 26, 2012 in that he created an unsafe sleep environment by swaddling the baby and placing him face down on the bed where Father and Hayley were sleeping, while Father was under the influence of alcohol and marijuana. The petition contained two additional factual allegations in support of jurisdiction under subdivision (b). The first was that Father was "a current abuser of marijuana and alcohol," rendering him "incapable of providing [Hayley] with regular care and supervision," that he was under the influence of marijuana and alcohol while Hayley was under his supervision on December 26, 2012, and that Mother "knew of [Father's] substance abuse and failed to protect [Hayley] in that [Mother] allowed [Father] to reside in the child's home and have unlimited access to the child." The second was that Father and Mother placed Hayley in a

detrimental and endangering home environment by leaving marijuana and drug paraphernalia in the home within access of the child.[7]

C. *Jurisdictional/Dispositional Hearing*

Prior to the jurisdictional/dispositional hearing, Mother moved into a residence separate from Father.[8] She also enrolled in a parenting program, commenced therapy and began attending Al-Anon meetings. Father enrolled in a drug and alcohol rehabilitation program, submitted to random drug tests, and attended therapy.

At the jurisdictional portion of the hearing, which began in July 2013 and concluded in December 2013, Hayley's counsel called John Hiserodt, M.D. as an expert witness concerning the cause of Adrian's death.[9] Dr. Hiserodt testified he "agree[d] with the coroner's findings that the cause of death [was] mechanical asphyxia due to overlaying."[10] He based his opinion on "evidence from the scene and evidence from the autopsy, [including] the gross findings and [the] evidence from microscopic finding[s] from the tissue." Dr. Hiserodt specifically pointed to hemorrhages in the lobes of the lungs and heart, which he believed were caused by

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[7] A separate and distinct allegation made under section 300, subdivisions (a) (physical abuse) and (b) (failure to protect), that Father pulled Hayley's hair and hit her, and that Mother knew of the physical abuse and failed to protect the child, was dismissed for lack of evidence at the recommendation of DCFS and Hayley's counsel.

[8] Hayley had been detained and placed with maternal relatives in January 2013.

[9] Hayley's counsel also called Father, but he asserted his privilege against self-incrimination and did not testify. Mother did not testify at the hearing.

[10] Dr. Hiserodt defined overlaying as "what happens when a small child or baby is sleeping in the bed with an adult, and the adult either rolls over onto the baby or puts a heavy weight, such as a leg on the baby and causes compression to the chest [so] that the baby can no longer breathe." He further explained that "mechanical asphyxia" means an individual cannot breath because his or her chest cannot expand, which generally occurs when something compresses the chest and prevents the individual from breathing.

"crushing the tissue under [a] heavy weight," rather than CPR attempts. He testified that by swaddling the baby, placing him in a face down position, and falling heavily asleep next to him, Father set up "a scene . . . for overlaying." Dr. Hiserodt saw no evidence of sepsis, and did not believe the bronchitis or pneumonia from which Adrian suffered had developed to the stage where it could have been responsible for his death.

Marvin Pietruszka, M.D. was called by Father as an expert witness on the cause of Adrian's death. Dr. Pietruszka expressed the opinion that pneumonia, complicated by pulmonary hemorrhage led to sepsis and Adrian's death, and that his death would have been the result of his medical condition without regard to any overlaying that might have occurred. He also expressed the opinion that the blood in the baby's lungs was due to pneumonia, and that his lungs had been damaged when he was put on a respirator at birth.

D. *Statement of Decision*

After hearing the evidence, the court prepared and read into the record a lengthy and comprehensive statement of decision (SOD). Relying almost exclusively on Father's own statements to the caseworker and investigators concerning his drug and alcohol usage, the court stated: "If [F]ather is telling the truth about his usage of drugs and alcohol, he is, at best a consistent user and at worse an abuser. The facts were inconclusive to really know for sure. Could [F]ather's use affect his parenting skills or judgment when taking care of a sick five month [old] baby and a three year old? This court believes it could." The court later reiterated that Father's "use of [marijuana] was tied to his lack of parenting skills and good judgment." The court also specifically found that Father "resumed his regular supervision of the children right after smoking [marijuana]" and stated there was "no evidence to suggest that [Father] regularly waited for the

drug [e]ffects to lapse before he took care of or supervision of the children." Father "made a terrible mistake by mixing alcohol and marijuana causing him to make a very bad parenting decision," namely, "t[aking] Adrian Jr. into the family bed, lay[ing] him on his stomach, swaddl[ing him, and] f[alling] deeply asleep." The court found "no other likely conclusion except that [Father] contributed to the death of [Adrian] through overlaying," but acknowledged "it is likely that we will never be one hundred percent certain how Adrian Jr. died."

With respect to Mother, the court found "sufficient evidence to show that she knew or should have known that [Father] could place the children at risk of harm due to [Father's] consistent use of illicit drugs mixed with alcohol. Mother testified that she and [Father] commonly took the children into bed when they were sick and so she knew that [Father] might do that even though he seems to sleep very heavily at least in part as a result of his drug use." The court concluded by acknowledging that co-sleeping was not "always a dangerous act" and that "there are many communities and cultures that regularly co-sleep without any problems or dangers to the babies." However, "if a person is under the influence to such a degree that they are not readily attentive to the needs of the child, terrible accidents such as this one can occur."

After reading its SOD into the record, the court stated that it was finding true the first subdivision (b) of section 300 allegation of the petition, the allegation also pled as a subdivision (j) allegation, and dismissing all other allegations. Mother's counsel asked the court to clarify that the court was finding true only the combination (b)(1)/(j)(1) allegation. The court stated "correct." DCFS's counsel commented: "Mother is not offending [in that allegation] but the court kind of implied you were finding her offending." The court stated it would "amend to proof . . . that she knew or she should have known." Mother's counsel objected, stating Mother had no notice that she was alleged to have known Father would put

Adrian to bed in an unsafe sleeping environment. The court reiterated that it would "amend to proof and add by interlineation that Mother knew or should have known."[11]

Turning to disposition, DCFS's counsel stated that the parties had "reached an agreement on almost all aspects of [disposition]." Counsel for DCFS explained that DCFS objected to the court's previously announced plan to return Hayley to Mother's custody. Counsel also explained DCFS's position that Father should enter a new drug rehabilitation program, but the court stated it would not require him to participate in a new program as long as he committed to continuing AA meetings and getting a sponsor. Father's counsel stated Father would "submit on that." The court's dispositional order placed Hayley with Mother, requiring her to continue to attend Al-Anon programs and participate in individual counseling. With respect to Father, the court's dispositional order required him to complete a parenting class, participate in counseling to address case issues, and continue to participate in AA and random drug testing. Father and Mother appealed.[12]

DISCUSSION

A. *Father's Appeal*

1. *Jurisdiction over Hayley*

Father contends the evidence did not support the court's jurisdictional finding because (1) his use of alcohol and marijuana did not amount to substance abuse of the type that would support a jurisdictional finding; (2) his actions in co-

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[11] Nothing in the record indicates the court ever amended the petition or the allegation found true to include Mother.

[12] While the appeal was pending, the court terminated jurisdiction, awarded joint custody to both parents, awarded Mother primary custody, and permitted Father unmonitored visitation.

sleeping with Adrian, placing him in an unsafe sleeping position, and accidentally overlaying him could not support a finding that Hayley was at risk; and (3) the findings were based on speculation. For the reasons discussed, we disagree.

Section 300, subdivision (b)(1) permits the assertion of jurisdiction where "the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's . . . substance abuse." Assertion of jurisdiction under this provision is warranted where the child is "of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] physical health and safety." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*).) For such a child, "'the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of harm.'" (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 (*Christopher R.*); accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 767.)

Multiple courts have said that a parent's use of marijuana alone is insufficient to support jurisdiction. (See, e.g., *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452; *In re David M.* (2005) 134 Cal.App.4th 822, 829-830; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346.) Indeed, it does not automatically follow from a finding that a parent used an illicit or inebriating substance that the parent is unable to provide regular care resulting in a substantial risk of physical harm to the child. (*In re Drake M., supra,* 211 Cal.App.4th at p. 766.) It is up to the juvenile court "to determine the degree to which a child is at risk based on an assessment of all the relevant factors in each case." (*Ibid.*) Where the facts support that a parent's marijuana smoking has become a persistent and regular habit that leads

the parent to neglect his or her children, assertion of jurisdiction under subdivision (b) of section 300 has been upheld. (See, e.g., *In re Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1219-1220; *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 453; see *In re Samkirtana S.* (1990) 222 Cal.App.3d 1475, 1489 [evidence supported removal of children from custody of mother where mother's excessive use of alcohol led to failure to supervise].)

Here, it was not Father's alcohol and marijuana use alone that persuaded the court to assert jurisdiction. Father used these substances once or twice daily, although he was regularly left to care for a months-old infant who had been medically fragile since birth and a three-year old who also had respiratory problems. As recently as November 2012, Adrian had been hospitalized for several days due to ongoing breathing difficulties, and had for several weeks thereafter needed special medication administered through a machine to ensure that he continued to draw breath. Despite knowing Adrian's medical history and that he was very sick with a cough, runny nose and congestion, on December 25, 2012, Father chose to ingest the equivalent of at least two alcoholic drinks and a substantial amount of marijuana, a substance he admittedly used to induce sounder sleep. When Adrian awoke crying, Father put him in a position nearly guaranteed to worsen his breathing problems: swaddled, on his stomach, and in an adult bed with an inebriated adult and a toddler. Father then fell into a deep sleep, from which he was roused only by Mother's attempts to locate Adrian. Father's actions in this regard supported the court's finding that his use of alcohol and marijuana rendered him unable to exercise good parental judgment, to think clearly, or to respond properly in an emergency while caring for his children.

Father claims that his bad judgment that night cast no reflection on what he would do if Hayley were left alone in his care. Hayley also was ill that day, and had had difficulty breathing in the past. The fact that Father had no hesitancy

ingesting marijuana and alcohol when both his children were ill and potentially in need of medical care established that the assertion of jurisdiction as to Hayley was warranted. The court need not have found that Hayley was subject to the same risk as Adrian. The court found that Father's substance abuse caused him to lose his parental judgment, and reasonably concluded that until Father confronted his longstanding drug and alcohol problem, Hayley could not safely be left in his care.

Father contends the finding that he contributed to Adrian's death by overlaying him was based on speculation. Although the coroner did not reach any conclusion concerning the specific cause of the "mechanical asphyxiation" that led to Adrian's death, the autopsy left open the possibility of accidental overlay. Dr. Hiserodt, a board-certified pathologist, who had worked as a coroner in the past and examined the autopsy records, concluded that the condition of the lungs and heart indicated accidental overlay had caused the mechanical asphyxiation.[13] The juvenile court, as trier of fact, was free to credit that testimony. Thus, its finding that Father contributed to Adrian's death by overlaying him during the night was supported by the evidence. But even apart from that specific finding, the clear evidence of Father's irresponsible behavior justified the court's assertion of jurisdiction.

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[13] Father claims Dr. Hiserodt's opinion "does not 'rise to the dignity of substantial evidence'" because the doctor testified he "'agreed with the coroner's findings that the cause of death was mechanical asphyxia due to overlaying,'" whereas the coroner found only that "[a]ccidental overlay[ing]" was not "excluded" as a cause of the "mechanical asphyxia." We have no obligation to parse every word spoken by the medical expert on appeal. Dr. Hiserodt may simply have meant he agreed with the coroner's finding of "mechanical asphyxia" and was adding his own opinion concerning the cause. Moreover, he provided a basis for his opinion independent of the coroner's report -- the lung and heart hemorrhaging noticeable in the tissue samples. Trial counsel had ample opportunity to cross-examine Dr. Hiserodt on this point to determine whether his opinion could be relied on.

2. *Custody of Hayley*

Father contends removal of Hayley from his custody in the court's dispositional order was improper because by the time of the December 2013 depositional hearing, he had completed a substance abuse program and there was no evidence of risk of harm to Hayley. Father forfeited his ability to raise this contention on appeal by reaching an accord on disposition with DCFS and submitting to the court's dispositional order.

Moreover, the issue of Hayley's custody is moot. While the appeal was pending, the court terminated jurisdiction, granted Father and Mother joint legal custody, and permitted Father unmonitored visitation. (See *In re Jessica K*. (2000) 79 Cal.App.4th 1313, 1315-1316 ["When no effective relief can be granted, an appeal is moot and will be dismissed."].) We can provide Father no effective relief with regard to the court's dispositional order.

B. *Mother's Appeal*

Mother contends the court erred in amending the petition after hearing the evidence in support of jurisdiction. She claims she had no notice that she might be found culpable on the grounds sustained by the court. For the reasons discussed, we disagree.

Preliminarily, as Mother also points out, the court failed to actually amend the petition to specify the allegations found true as to Mother. Mother contends this was error and, in any event, left some doubt as to its actual findings. "'"'It has long been settled law that where (1) a case is tried on the merits, (2) the issues are thoroughly explored during the course of the trial and (3) the theory of the trial is well known to court and counsel, the fact that the issues were not pleaded does not preclude an adjudication of such litigated issues and a review thereof on appeal.'"'" (*Pierce v. Pacific Gas & Electric Co*. (1985) 166 Cal.App.3d 68, 78,

quoting *People v. Toomey* (1984) 157 Cal.App.3d 1, 11; see *Donovan v. Wechsler* (1970) 11 Cal.App.3d 210, 213 [where case was tried on assumption that formal amendment to conform to proof would be filed and evidence supported proposed amendment, fact that no formal amendment was ever filed was "immaterial"].) The court's failure to physically amend the petition through handwritten additions and interlineations, as is the general practice, does not prevent us from comprehending and reviewing its findings on appeal, as the court provided a comprehensive SOD. According to the SOD, Mother's culpability was based on her knowledge that Father's consistent use of marijuana mixed with alcohol caused him to sleep very heavily, and her knowledge that he commonly took the children into bed when they were sick.

Turning to the issue of the propriety of the amendment, juvenile court proceedings are governed by the provisions of the Code of Civil Procedure relating to variance and the amendment of pleadings in civil actions; ordinarily, amendments to conform to proof to remedy variances between the petition and the evidence are favored. (§ 348; *In re Andrew L.* (2011) 192 Cal.App.4th 683, 688-689; *In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1042.) An amendment to conform to proof is improper only if the variance between the petition and the evidence offered at the jurisdictional hearing is so great that "the parent is denied constitutionally adequate notice of the allegations against him or her . . . ." (*In re David H.* (2008) 165 Cal.App.4th 1626, 1640.) The test is whether "the pleading as drafted prior to the proposed amendment would have misled the [parent] to his [or her] detriment" or caused him or her to prepare the defense differently. (*In re Jessica C.*, *supra*, 93 Cal.App.4th at p. 1042; accord, *In re Andrew L.*, *supra*, 192 Cal.App.4th at p. 689; see *In re Man J.* (1983) 149 Cal.App.3d 475, 481 ["[T]he juvenile court has discretion to permit amendment of a juvenile court wardship

petition to correct or make more specific the factual allegations supportive of the offense charged when the very nature of the charge remains unchanged."].)

Here, the original petition alleged that Mother was aware of Father's substance abuse and that it rendered him incapable of providing Hayley with regular care and supervision, that Father was under the influence of marijuana and alcohol when Mother left Hayley in his care on December 26, 2012, and that she failed to protect Hayley from him. In its SOD, the court found that Mother knew or should have known Father would place the children at risk of harm due to his substance abuse and that he commonly took the children into bed when they were sick. The court's findings were not so divergent from the allegations of the petition as to implicate Mother's due process rights.

C. *Issue Raised by Both Appellants*

Appellants contend that substantial evidence did not support the court's determination that Hayley was at risk of harm at the time of the jurisdictional findings, which were made nearly a year after DCFS's intervention, after Father had completed a substance abuse program and Mother had separated from Father. Specifically, Mother contends she could not have foreseen that Father "would make a tragic mistake on the night of December 26, 2012," and that there were no "apparent warning signs that [Father] might endanger his children."

Although the court must determine "'whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm,'" (*In re James R.* (2009) 176 Cal.App.4th 129, 135, quoting *Rocco M.*, *supra*, 1 Cal.App.4th at p. 824), "the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child . . . ." (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.) The court may properly conclude based on past events that a child "presently needs the court's protection . . . ." (*Ibid*.) A

parent's past conduct is probative of current conditions "'if there is reason to believe that the conduct will continue.'" (*Ibid.*, quoting *In re S.O.* (2002) 103 Cal.App.4th 453, 461.) On appeal from a jurisdictional order, "we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings." (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

The evidence supported the court's assertion of jurisdiction at the time of the hearing. Father had been free from substance abuse for months, but his abuse of marijuana and alcohol was a longstanding problem, and the court could reasonably conclude that without its supervision, he would backslide. Although Mother had separated from Father and appeared to be maintaining a separate household, there was no guarantee that they would not reunite before Father had dealt fully with his substance abuse problem. Mother exercised very poor judgment in leaving Father alone with the children, including an ailing infant, when Father was under the influence of marijuana and alcohol. The court could reasonably conclude this was not the first or only time Father had been left to care for the children while inebriated. Moreover, there was other evidence of problems beyond a single lapse of judgment on December 26. Appellants had run out of the medication needed to treat both Adrian's and Hayley's ongoing respiratory problems, and the children were living in a household described as filthy, with marijuana and drug paraphernalia in plain view. Based on an assessment of all the relevant evidence, the court could reasonably conclude that assertion of jurisdiction was necessary to keep the parents on the right track, notwithstanding their commendable initial efforts to deal with the problems that lead to the detention.

DISPOSITION

The court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.